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**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION**

In re:) Chapter 11

CIRCUIT CITY STORES, INC., et al.,) Case No. 08-35653-KRH

Debtors.) Jointly Administered

**APPLICATION OF ORANGEFAIR MARKETPLACE, LLC, A CALIFORNIA
LIMITED LIABILITY COMPANY FOR ENTRY OF ORDER ALLOWING
ADMINISTRATIVE CLAIM RELATING TO POSTPETITION CHARGES
UNDER LEASE FOR STORE #3364 (FULLERTON, CALIFORNIA) AND
MEMORANDUM IN SUPPORT**

COMES NOW The Orangefair Marketplace, LLC, A California Limited Liability Company (“OM LLC”), by its counsel, and seeks an Order allowing its administrative claim for rent and other charges accruing post-petition under its lease with Debtor, pursuant to 11 U.S.C. §§ 365(d), 503(b) and 507(a).¹ In support of this Application, SRPL states as follows:

¹ The Lease is not attached to this application, but it will promptly be made available to the Debtor and/or other appropriate parties-in-interest upon request.

BACKGROUND

1. On November 10, 2008, Circuit City, Inc. and its affiliated debtors (the “Debtors”) filed a voluntary petition under Chapter 11 of Title 11 of the United States Code in this Court.
2. OM LLC is the landlord/owner for a store operated by Debtor and known as Store # 3364 located in Fullerton, California (the “Leased Premises”). The Debtor leased the Leased Premises from OM LLC.
3. The Debtors rejected the Lease and the effective rejection date was April 30, 2009 (the “Rejection Date”) pursuant to an Order of this Court.

RELIEF SOUGHT

4. OM LLC seeks an allowed administrative claim for charges that accrued postpetition and through the Rejection Date under the Lease. The charges are detailed as follows:

Date	Description of Charge	Lease Provision	Amount
11/10/2008- 11/30/2008	Rent ² (21 days at \$1,276.27 per diem)	Lease ¶¶7(b), 14(e)(i)-(ii)	\$26,801.57
11/10/2008- 3/9/2009	Real Estate Taxes ³ (119 days at \$122.22 per diem)	Lease ¶9	\$14,666.30
3/1/2009- 3/09/2009	Rent (9 days at \$1,235.10 per diem) ⁴	Lease ¶7(b), 14(e) (i)-(ii)	\$11,115.87
11/10/2008- 12/31/2008	Annual Common Area Maintenance Reconciliation: 2008	Lease ¶7	\$246.66
3/2009	Attorneys Fees ⁵	Lease ¶30(c)	\$11,941.25
Total Administrative Expense Claim not less than:⁶			\$64,771.65

² Rent includes Common Area Maintenance Charges.

³ On 12/10/2008, OC LLC paid the Real Estate taxes for the 7/1/2008-6/30/2009 tax period, an amount of \$44,609.97. OC LLC filed a claim for the pre-petition amount of \$16,255.13 and the rejection damages of \$7,455.36, and waived (per its stipulation with Debtor) \$6,355.40 as the prorated amount for 3/10/2009-4/30/2009, leaving the above indicated amount due.

⁴ Total rent amounted to \$34,925.00 and OC LLC waived \$24,785.48 per stipulation with Debtor.

⁵ Attorneys fees represent fees incurred by OC LLC through March 31, 2009, which are the Debtor’s responsibility under the Lease. OC LLC will produce copies of its attorney fee statements upon request and reserves the right to amend its claim for attorneys fees as necessary.

⁶ OC LLC has also filed a proof of claim reflecting prepetition rent claims, lease rejection damages, and these same administrative rent claims and other charges.

5. Section 365(d)(3) mandates that the Debtors pay all post-petition obligations arising under the Lease until the lease is rejected. *In re Klein Sleep Products, Inc.*, 78 F.3d 18, 30, n.7 (2nd Cir. 1996); *In re Dial-A-Tire, Inc.*, 78 B.R. 13, 16 (Bankr. W.D.N.Y. 1987) (Section 365(d)(3) requires continued performance under a lease until the lease is rejected). The rejection of a lease and the termination of obligations under Section 365(d)(3) do not occur until an order is entered rejecting the lease. *In re Thinking Machines Corp.*, 67 F.3d 1021, 1028 (1st Cir. 1995). Moreover, Section 503(b) of the Bankruptcy Code permits landlords to obtain administrative claims for post-petition charges for rents, taxes, CAM charges, etc. See 11 U.S.C. § 503(b) (“After notice and a hearing, there shall be allowed administrative expenses, other than claims allowed under section 502(f) of this title, including-- (1)(A) the actual, necessary costs and expenses of preserving the estate . . .”).

6. There can be no real dispute that the Debtors’ post-petition use of the Leased Premises qualifies as an “actual, necessary” cost of preserving the estate. *Zagata Fabricators, Inc. v. Superior Air Prods.*, 893 F.2d 624, 627 (3d Cir. 1990) (“There is no question, of course, that the payment of rent for the use and occupancy of real estate...is clearly an ‘actual, necessary’ cost of preserving the estate.”). Accordingly, the charges above are proper, allowable administrative expenses. See *In re ZB Co., Inc.*, 302 B.R. 316, 319 (Bankr. D. Del 2003) (“Section 503(b)(1)(A) grants an allowed administrative claim for the ‘actual, necessary costs and expenses of preserving the estate...’”).

WHEREFORE, OM LLC requests the Court to grant the relief herein and to award such other relief as this Court deems appropriate.

Respectfully Submitted,

Dated: June 29, 2009

VANDEVENTER BLACK LLP

/s/ Kevin A. Lake

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California Limited Liability Company*

CERTIFICATE OF SERVICE

I hereby certify that I have caused a true and complete copy of this Application to be served on all parties receiving notice via ECF on June 29, 2009. I further certify that I caused an original of this Application to be delivered via overnight mail, for filing, to Kurtzman Carson Consultants, 2335 Alaska Ave., El Segundo, CA 90245 on June 29, 2009.

/s/ Jerrell E. Williams

4838-8079-1811, v. 1

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